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August 21, 2012

Corbin Davis
Clerk, Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48090

Re: ADM File No. 2011-10
Proposed Amendment of MCR 7.118 (Appeals from the Michigan Parole Board)

Dear Mr. Davis:

I am writing to support the proposed adoption of the amendments to MCR 7.118, which would require the appointment of counsel for indigent prisoner-appellees in prosecutor parole appeals.

The State Appellate Defender Office has been representing some prisoner-appellees in prosecutor parole appeals for the last four years. See *In re Parole of Andrew Osantowski*, 488 Mich 952 (2010) (this Court reversed the circuit court and the Court of Appeals, and affirmed the Parole Board's grant of parole); *In re Parole of Craig Atkins*, Oakland County Circuit Court #2009-105182-AP (circuit court affirmed the Parole Board's grant of parole); *In re Parole of Terry Lee Mefford*, Macomb County Circuit Court #2010-3343-AP (circuit court affirmed the Parole Board's grant of parole); *In re Parole of Michelle Elias*, 294 Mich App 507 (2011) [Court of Appeals reversed the circuit court and affirmed the Parole Board's grant of parole after remand by this Court, 488 Mich 1034 (2011)]; *In re Parole of Philip Paquette*, COA #301140 [Court of Appeals affirmed the Parole Board's grant of parole after remand by this Court, 489 Mich 982 (2011)]; *In re Parole of Tanika Lynch*, unpublished, COA #307548, 8/7/2012 (Court of Appeals reversed the circuit court and affirmed the Parole Board's grant of parole); *In re Parole of Ronald Wynn Hill*, COA #301364 (right to counsel issue currently pending in Court of Appeals; oral argument held on 1/5/2012).

The current rule does not provide for the appointment of counsel for indigent prisoner-appellees. Instead, the current rule only provides that "the prisoner may respond to the application for leave to appeal through retained counsel or in propria persona, although no response is required" MCR 7.118(D)(3)(b)(i). For those prisoner-appellees who can afford to retain counsel, they have the invaluable assistance of an attorney to combat the full force of the prosecutor's office in these appeals. Yet, the indigent prisoner-appellee is left to navigate a very

complex appellate arena either in propria persona, or to simply hope that the Attorney General's representation of the other appellee, the Parole Board, will maybe cover the prisoner's interests. This is wholly inadequate.

For some prisoners who attempt to represent themselves, their attempts at "lawyering" is used against them by the prosecutor and by the circuit court during the appeal. In the recent case of *In re Parole of Philip Paquette*, *supra*, Mr. Paquette represented himself in the circuit court. When he prepared his answer to the prosecutor's Application for Leave to Appeal, he wrote "Defendant neither admits or denies paragraph seven that the Defendant murdered an unarmed young man. Defendant does admit that he was jury convicted for one count of second-degree murder, but leaves the People up to their proofs if the victim was unarmed." The prosecutor and the circuit court were quick to find that this was clear proof that Mr. Paquette did not accept responsibility for the offense. The circuit court's opinion reversing the Parole Board was initially affirmed by the Court of Appeals. COA #301140. This Court clearly recognized the need for the assistance of assigned appellate counsel in these cases when it ordered the appointment of SADO to represent Mr. Paquette on remand to the Court of Appeals. 489 Mich 982 (2011). With the assistance of SADO, Mr. Paquette finally obtained relief on remand in the Court of Appeals.

The Attorney General's Office is exceedingly skilled and provides excellent representation to the Parole Board in these prosecutor parole appeals. However, this is insufficient to represent the interests of the prisoner-appellee. The Attorney General only represents the Parole Board. The Attorney General does not meet with the prisoner-appellee, or solicit their input, or address their concerns during these appeals. Furthermore, the Attorney General does not always pursue a circuit court's decision reversing the Parole Board to the Court of Appeals (as in *Osantowski*), or to this Court (as in *Elias*).

In these parole appeals, the record is the prisoner's Michigan Department of Corrections central office file and any other documents considered by the Parole Board in reaching its decision. MCR 7.118(H)(1)(a). For many of these prisoners this MDOC record spans 15-25 years and is quite lengthy. The prisoner's input is valuable in reviewing and analyzing his or her file and the prosecutor's appeal.

The Court of Appeals in *Elias* thoroughly analyzed the multipart mechanics of prosecutor parole appeals, but such appeals remain complicated and require the parties to be familiar with the statutes, cases, regulations and MDOC internal procedures. The assistance of appointed counsel is crucial. Furthermore, these prosecutor parole appeals are heard on an expedited basis at each level of appellate review. See MCR 7.118(G), (H), and (I). Given the constraints of prison, it is next to impossible for an indigent prisoner-appellee to adequately research and prepare the necessary pleadings on such an expedited schedule.

The proposed amendments to MCR 7.118(D)(3)(b) set forth the better practice of appointing counsel for indigent prisoner-appellees. It also provides that the representation continues if leave to appeal is granted by the circuit court, or if subsequent appellate procedures are pursued in the Court of Appeals. See subrule (H). This provision is crucial. The error rate by the circuit courts is high in these cases. In SADO's cases alone, the circuit court's decision to reverse the Parole Board was overturned on appeal in all four cases (*Osantowski*, *Elias*, *Paquette* and *Lynch*, *supra*). Without the assistance of appointed counsel for the prisoner, these errors may well have gone uncorrected. The cost is immeasurable, both to the prisoner who remains

incarcerated and to the state of Michigan that continues to pay the very high costs of incarceration.

In summary, the proposed amendments to MCR 7.118 address the deficiencies in the current rule and practice. I urge the Court to adopt these amendments.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Dawn Van Hoek". The signature is written in a cursive style with a prominent "D" and a long, sweeping "k" at the end.

Dawn Van Hoek
Director
State Appellate Defender Office